

# Senate Study Bill 3008

SENATE FILE \_\_\_\_\_  
BY (PROPOSED COMMITTEE ON  
ECONOMIC GROWTH BILL BY  
CO=CHAIRPERSON BRUNKHORST)

Passed Senate, Date \_\_\_\_\_ Passed House, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

## A BILL FOR

1 An Act relating to eminent domain authority and condemnation and  
2 including effective date and applicability date provisions.  
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:  
4 TLSB 5175XK 81  
5 sc/sh/8

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1 1 Section 1. Section 6A.21, subsection 2, Code 2005, is  
1 2 amended to read as follows:  
1 3 2. The limitation on the definition of public use, public  
1 4 purpose, or public improvement does not apply to a slum area  
1 5 or blighted area as defined in section 403.17, or to  
1 6 ~~agricultural land acquired for industry as that term is~~  
1 7 ~~defined in section 260E.2, provided in section 6A.22~~ or to the  
1 8 establishment, relocation, or improvement of a road pursuant  
1 9 to chapter 306, or to the establishment of a railway under the  
1 10 supervision of the department of transportation as provided in  
1 11 section 327C.2, or to an airport as defined in section 328.1,  
1 12 or to land acquired in order to replace or mitigate land used  
1 13 in a road project when federal law requires replacement or  
1 14 mitigation. This limitation also does not apply to utilities  
1 15 or persons under the jurisdiction of the Iowa utilities board  
1 16 in the department of commerce or to any other utility  
1 17 conferred the right by statute to condemn private property or  
1 18 to otherwise exercise the power of eminent domain.  
1 19 Sec. 2. NEW SECTION. 6A.22 ADDITIONAL LIMITATIONS ON  
1 20 EXERCISE OF POWER == DEFINITIONS.  
1 21 1. In addition to the limitations in section 6A.21, the  
1 22 authority of an acquiring agency to condemn any private  
1 23 property through eminent domain may only be exercised for a  
1 24 public purpose, public use, or public improvement. However,  
1 25 if the owner of the property consents to the condemnation, the  
1 26 property may be condemned for any purpose.  
1 27 2. a. "Public use", "public purpose", or "public  
1 28 improvement" means one or more of the following:  
1 29 (1) The possession, occupation, and enjoyment of property  
1 30 by the general public or governmental entities.  
1 31 (2) The acquisition of any interest in property necessary  
1 32 to the function of a public or private utility or common  
1 33 carrier.  
1 34 (3) Private use that is incidental to the public use of  
1 35 the property, provided that no property shall be condemned  
2 1 solely for the purpose of facilitating such incidental private  
2 2 use.  
2 3 (4) The acquisition of property pursuant to chapter 455H.  
2 4 (5) The acquisition of property in that portion of an  
2 5 urban renewal area designated as a slum or blighted area if  
2 6 each parcel, or any improvements thereon, for which  
2 7 condemnation is sought is determined by the governing body of  
2 8 the municipality to be presently suffering from one or more of  
2 9 the following:  
2 10 (a) Dilapidated, deteriorated, or deteriorating structures  
2 11 located on the parcel.  
2 12 (b) Unsafe conditions or inadequate provision for  
2 13 sanitation.  
2 14 (c) Existence of conditions which endanger life or  
2 15 property by fire and other causes.  
2 16 (d) Substantial deterioration of site.

2 17 (e) Tax or special assessment delinquency exceeding the  
2 18 fair value of the land.

2 19 (f) Defective or unusual conditions of title.

2 20 (g) Use of the property that is detrimental to the public  
2 21 health, safety, or welfare.

2 22 In any action contesting a determination made pursuant to  
2 23 this subparagraph (5), the burden of proof is on the acquiring  
2 24 agency to prove by clear and convincing evidence that it did  
2 25 not abuse its discretion in making such a determination.

2 26 b. Except as specifically included in the definition in  
2 27 paragraph "a", "public use", "public purpose", or "public  
2 28 improvement" does not mean economic development activities  
2 29 resulting in increased tax revenues, increased employment  
2 30 opportunities, privately owned or privately funded housing and  
2 31 residential development, privately owned or privately funded  
2 32 commercial or industrial development, the lease of publicly  
2 33 owned property to a private party, or recreational development  
2 34 paid for primarily with private funds.

2 35 3. In any action contesting whether eminent domain  
3 1 authority is being exercised for a public use, public purpose,  
3 2 or public improvement, the burden of proof is on the acquiring  
3 3 agency to prove by clear and convincing evidence that the  
3 4 proposed use of the property meets the definition of public  
3 5 use, public purpose, or public improvement in subsection 2.

3 6 Sec. 3. Section 6B.1, Code 2005, is amended to read as  
3 7 follows:

3 8 6B.1 DEFINITIONS.

3 9 1. As used in this chapter, unless the context otherwise  
3 10 requires, "book", "list", "record", or "schedule" kept by a  
3 11 county auditor, assessor, treasurer, recorder, sheriff, or  
3 12 other county officer means the county system as defined in  
3 13 section 445.1.

3 14 2. For purposes of this chapter, "acquiring agency" means  
3 15 the state of Iowa or any person or entity conferred the right  
3 16 by statute to condemn private property or to otherwise  
3 17 exercise the power of eminent domain.

3 18 Sec. 4. Section 6B.2A, subsection 1, unnumbered paragraph  
3 19 1, Code 2005, is amended to read as follows:

3 20 An acquiring agency shall provide written notice of a  
3 21 public hearing to each owner and any contract purchaser of  
3 22 record of ~~agricultural land~~ private property that may be the  
3 23 subject of condemnation. The authority under this chapter is  
3 24 not conferred and condemnation proceedings shall not begin  
3 25 unless a good faith effort is made to mail and publish the  
3 26 notice as provided in this section on the owner and any  
3 27 contract purchaser of record of the property subject to  
3 28 condemnation. The notice shall be mailed by ordinary mail,  
3 29 not less than thirty days before the date the hearing is held,  
3 30 to the owner and any contract purchaser of record of each  
3 31 property or property interest at the owner's and contract  
3 32 purchaser's last known address as shown in the records of the  
3 33 county auditor not less than seven days nor more than fourteen  
3 34 days prior to the date of mailing. A change in ownership of  
3 35 any such property which is not reflected in the records of the  
4 1 county auditor during the period those records are searched as  
4 2 above provided shall not affect the validity of the notice or  
4 3 any condemnation proceeding commenced on the basis of such  
4 4 notice. The notice shall be given and the public hearing held  
4 5 before adoption of the ordinance, resolution, motion, or other  
4 6 declaration of intent to fund the final site-specific design  
4 7 for the public improvement, to make the final selection of the  
4 8 route or site location for the public improvement, or to  
4 9 acquire or condemn, if necessary, all or a portion of the  
4 10 property or an interest in the property for the public  
4 11 improvement. If the location of the public improvement is  
4 12 changed or expanded after the decision has been made to  
4 13 proceed with the public improvement, a notice shall be mailed  
4 14 by ordinary mail no less than thirty days before the adoption  
4 15 of the ordinance, resolution, motion, or other declaration of  
4 16 intent to proceed with a change in the location of the public  
4 17 improvement to the owner and any contract purchaser of record  
4 18 of the ~~land~~ property to be acquired or condemned, if  
4 19 necessary, in the new location of the public improvement  
4 20 affected by the change. The mailed notice shall, at a  
4 21 minimum, include the following information:

4 22 Sec. 5. Section 6B.2A, subsection 2, unnumbered paragraph  
4 23 1, Code 2005, is amended to read as follows:

4 24 The acquiring agency shall cause a notice to be published  
4 25 once in a newspaper of general circulation in the county or  
4 26 city where the ~~agricultural land~~ property to be acquired or  
4 27 condemned is located. The notice shall be published at least

4 28 four but no more than twenty days before the public hearing is  
4 29 held as referred to in subsection 1. The published notice  
4 30 shall, at a minimum, include the following information:  
4 31 Sec. 6. Section 6B.2B, Code 2005, is amended to read as  
4 32 follows:  
4 33 6B.2B ACQUISITION NEGOTIATION ~~STATEMENT OF RIGHTS~~.  
4 34 The acquiring agency shall make a good faith effort to  
4 35 negotiate with the owner to purchase the private property or  
5 1 property interest before filing an application for  
5 2 condemnation or otherwise proceeding with the condemnation  
5 3 process. An acquiring agency shall not make an offer to  
5 4 purchase the property or property interest that is less than  
5 5 the fair market value the acquiring agency has established for  
5 6 the property or property interest pursuant to the appraisal  
5 7 required in section 6B.45 plus expenses listed in section  
5 8 6B.54, subsection 10, or less than the value determined under  
5 9 the acquiring agency's waiver procedure established pursuant  
5 10 to section 6B.54, subsection 2, for acquisition of property  
5 11 with a low fair market value plus expenses listed in section  
5 12 6B.54, subsection 10. However, an acquiring agency need not  
5 13 make an offer in excess of that amount in order to satisfy the  
5 14 requirement to negotiate in good faith. ~~An acquiring agency~~  
5 15 ~~is deemed to have met the requirements of this section if the~~  
5 16 ~~acquiring agency complies with section 6B.54.~~  
5 17 Sec. 7. Section 6B.3, subsection 1, paragraph d, Code  
5 18 2005, is amended to read as follows:  
5 19 d. The purpose for which condemnation is sought. ~~For~~  
5 20 ~~purposes of section 6B.4A, if condemnation of agricultural~~  
5 21 ~~land is sought by a city or county, or an agency of a city or~~  
5 22 ~~county, for location of an industry as that term is defined in~~  
5 23 ~~section 260E.2, the application shall so state. However, the~~  
5 24 ~~city or county shall not be required to disclose information~~  
5 25 ~~on an industrial prospect with which the city or county is~~  
5 26 ~~currently negotiating.~~  
5 27 Sec. 8. Section 6B.3, subsection 3, unnumbered paragraph  
5 28 2, Code 2006, is amended to read as follows:  
5 29 When indexed, the proceeding is considered pending so as to  
5 30 charge all persons not having an interest in the property with  
5 31 notice of its pendency, and while pending no interest can be  
5 32 acquired by the third parties in the property against the  
5 33 rights of the applicant. If the appraisal of damages  
5 34 pursuant to section 6B.14 is not made within one hundred  
5 35 twenty days, the proceedings instituted under this section are  
6 1 terminated and all rights and interests of the applicant  
6 2 arising out of the application for condemnation terminate.  
6 3 The applicant may reinstitute a new condemnation proceeding at  
6 4 any time. The reinstituted proceedings are entirely new  
6 5 proceedings and not a revival of the terminated proceeding.  
6 6 Sec. 9. NEW SECTION. 6B.3A CHALLENGE BY OWNER.  
6 7 An owner of property described in an application for  
6 8 condemnation may bring an action to challenge the exercise of  
6 9 eminent domain authority or the condemnation proceedings in  
6 10 the district court of the county in which the private property  
6 11 is situated at any time up until the deadline for filing a  
6 12 notice of appeal of appraisal of damages under section  
6 13 6B.18, subsection 1. The condemnation proceedings against  
6 14 such property shall be stayed while court action is pending.  
6 15 Sec. 10. Section 6B.8, Code 2005, is amended to read as  
6 16 follows:  
6 17 6B.8 NOTICE OF ASSESSMENT.  
6 18 The applicant, or the owner or any lienholder or  
6 19 encumbrancer of any land described in the application, may, at  
6 20 any time after the appointment of the commissioners, have the  
6 21 damages to the lands of any such owner assessed by giving the  
6 22 other party, if a resident of this state, thirty days' notice,  
6 23 in writing. The notice shall specify the day and the hour  
6 24 when the compensation commission will meet, view the premises,  
6 25 and assess the damages. The notice shall be personally served  
6 26 upon all necessary parties in the same manner provided by the  
6 27 Iowa rules of civil procedure for the personal service of  
6 28 original notice. ~~If a city or county, or an agency of a city~~  
6 29 ~~or county, is seeking to condemn agricultural land for an~~  
6 30 ~~industry as that term is defined in section 260E.2, the notice~~  
6 31 ~~shall inform the landowner that the landowner may request that~~  
6 32 ~~the compensation commission review the application as provided~~  
6 33 ~~in section 6B.4A.~~  
6 34 Sec. 11. Section 6B.14, unnumbered paragraph 2, Code 2005,  
6 35 is amended to read as follows:  
7 1 Prior to the meeting of the commission, the commission or a  
7 2 commissioner shall not communicate with the applicant,  
7 3 property owner, or tenant, or their agents, regarding the

7 4 condemnation proceedings. The commissioners shall meet in  
7 5 open session to view the property and to receive evidence, but  
7 6 may deliberate in closed session. If the commission chooses  
7 7 to deliberate in closed session, the meeting is closed to all  
7 8 persons who are not commissioners. After deliberations  
7 9 commence, the commission and each commissioner is prohibited  
7 10 from communicating with any party to the proceeding, unless  
7 11 such communication occurs in the presence of or with the  
7 12 consent of the property owner and the other parties who  
7 13 appeared before the commission. The commission shall keep  
7 14 minutes of all its meetings showing the date, time, and place,  
7 15 the members present, and the action taken at each meeting.  
7 16 The minutes shall show the results of each vote taken and  
7 17 information sufficient to indicate the vote of each member  
7 18 present. The vote of each member present shall be made public  
7 19 at the open session. The minutes shall be public records open  
7 20 to public inspection.

7 21 Sec. 12. Section 6B.42, subsection 1, Code 2005, is  
7 22 amended to read as follows:

7 23 1. a. ~~The If condemnation of property will result in the~~  
7 24 ~~displacement of a person, the acquiring agency shall provide~~  
7 25 ~~to the person, in addition to any other sums of money in~~  
7 26 ~~payment of just compensation and upon proper application to~~  
7 27 ~~the acquiring agency, the payments and assistance required by~~  
7 28 ~~law, in accordance with chapter 316 payment for actual~~  
7 29 ~~reasonable and necessary expenses incurred in moving the~~  
7 30 ~~person, the person's family, business, farm operation, or~~  
7 31 ~~other personal property. The payment may also provide for~~  
7 32 ~~actual direct losses of tangible personal property, purchase~~  
7 33 ~~of substitute personal property, business reestablishment~~  
7 34 ~~expenses, storage expenses, and expenses incurred in searching~~  
7 35 ~~for a replacement business or farm operation.~~

8 1 b. A person aggrieved by a determination made as to  
8 2 eligibility for relocation assistance, a payment, or the  
8 3 amount of the payment, ~~upon application,~~ may apply to have the  
8 4 matter reviewed by the appropriate acquiring agency.

8 5 c. An acquiring agency ~~subject to this section that~~  
8 6 proposes to displace a person shall inform the person of the  
8 7 person's right to receive relocation assistance and payments,  
8 8 and of an aggrieved person's right to appeal a determination  
8 9 as to assistance and payments.

8 10 Sec. 13. Section 6B.54, unnumbered paragraph 1, Code 2005,  
8 11 is amended to read as follows:

8 12 For any ~~project or displacing activity that has received or~~  
8 13 ~~will receive federal financial assistance as defined in~~  
8 14 ~~section 316.1, for any state-funded projects, or for any other~~  
8 15 ~~public use, public purpose, or public improvement for which~~  
8 16 condemnation is sought, an acquiring agency shall, at a  
8 17 minimum, satisfy the following policies:

8 18 Sec. 14. Section 6B.54, subsection 1, Code 2005, is  
8 19 amended to read as follows:

8 20 1. Every reasonable and good faith effort shall be made to  
8 21 acquire expeditiously real property by negotiation as provided  
8 22 in section 6B.2B.

8 23 Sec. 15. Section 6B.54, subsection 3, Code 2005, is  
8 24 amended to read as follows:

8 25 3. Before the initiation of negotiations for real  
8 26 property, the acquiring agency shall establish an amount which  
8 27 it believes to be just compensation for the real property, and  
8 28 shall make a prompt offer to acquire the property for the full  
8 29 amount established by the agency. In no event shall the  
8 30 amount be less than the ~~lowest appraisal of the~~ fair market  
8 31 ~~value of the acquiring agency has established for the property~~  
8 32 ~~or property interest pursuant to the appraisal required in~~  
8 33 ~~section 6B.45 plus expenses listed in subsection 10, or less~~  
8 34 ~~than the value determined under the acquiring agency's waiver~~  
8 35 ~~procedure established pursuant to subsection 2, plus expenses~~  
9 1 ~~listed in subsection 10.~~ In the case of a utility or person

9 2 under the jurisdiction of the utilities board of the  
9 3 department of commerce, or any other utility conferred the  
9 4 right by statute to condemn private property, the amount shall  
9 5 not be less than the amount indicated by the methods and  
9 6 factors used in arriving at an offered price for a voluntary  
9 7 easement.

9 8 Sec. 16. Section 6B.54, subsection 10, unnumbered  
9 9 paragraph 3, Code 2005, is amended to read as follows:

9 10 A person aggrieved by a determination as to the eligibility  
9 11 for or amount of a reimbursement may have the matter reviewed  
9 12 by the acquiring agency or in accordance with section 316.9 if  
9 13 applicable.

9 14 Sec. 17. Section 6B.55, unnumbered paragraph 1, Code 2005,

9 15 is amended to read as follows:  
9 16 For any ~~program or project that has received or will~~  
~~9 17 receive federal financial assistance as defined in section~~  
~~9 18 316.1, for any state-funded projects, or for any other public~~  
~~9 19 use, public purpose, or public improvement for which~~  
9 20 condemnation is sought, an acquiring agency shall at a minimum  
9 21 satisfy the following policies:  
9 22 Sec. 18. Section 28F.11, Code 2005, is amended to read as  
9 23 follows:  
9 24 28F.11 EMINENT DOMAIN.  
9 25 Any public agency participating in an agreement authorizing  
9 26 the joint exercise of governmental powers pursuant to this  
9 27 chapter may exercise its power of eminent domain to acquire  
9 28 interests in property, under provisions of law then in effect  
9 29 and applicable to the public agency, for the use of the entity  
9 30 created to carry out the agreement, provided that the power of  
9 31 eminent domain is not used to acquire interests in property  
9 32 which is part of a system of facilities in existence, under  
9 33 construction, or planned, for the generation, transmission or  
9 34 sale of electric power. In the exercise of the power of  
9 35 eminent domain, the public agency shall proceed in the manner  
10 1 provided by chapter 6B. Any interests in property acquired  
10 2 are acquired for a public purpose, as defined in chapter 6A,  
10 3 of the condemning public agency, and the payment of the costs  
10 4 of the acquisition may be made pursuant to the agreement or to  
10 5 any separate agreement between the public agency and the  
10 6 entity or the other public agencies participating in the  
10 7 entity or any of them. Upon payment of costs, any property  
10 8 acquired is the property of the entity.  
10 9 Sec. 19. Section 327I.7, subsection 4, Code 2005, is  
10 10 amended to read as follows:  
10 11 4. Exercise the power of eminent domain consistent with  
10 12 the provisions of chapters 6A and 6B.  
10 13 Sec. 20. Section 346.27, subsection 9, paragraph b, Code  
10 14 2005, is amended to read as follows:  
10 15 b. To acquire in the corporate name of the authority the  
10 16 fee simple title to the real property located within the area  
10 17 by purchase, gift, devise, or by the exercise of the power of  
10 18 eminent domain consistent with the provisions of chapters 6A  
10 19 and 6B, or to take possession of real estate by lease.  
10 20 Sec. 21. Section 389.3, unnumbered paragraph 2, Code 2005,  
10 21 is amended to read as follows:  
10 22 A joint water utility is a political subdivision and an  
10 23 instrumentality of municipal government. The statutory  
10 24 powers, duties, and limitations conferred upon a city utility  
10 25 apply to a joint water utility, except that title to property  
10 26 of a joint water utility may be held in the name of the joint  
10 27 water utility. The joint water utility board shall have all  
10 28 powers and authority of a city with respect to property which  
10 29 is held by the joint water utility. A joint water utility  
10 30 shall have the power of eminent domain, including the powers,  
10 31 duties, and limitations conferred upon a city in chapters 6A  
10 32 and 6B, for the purposes of constructing and operating a joint  
10 33 water utility.  
10 34 Sec. 22. Section 403.2, subsection 4, Code 2005, is  
10 35 amended to read as follows:  
11 1 4. It is further found and declared that the powers  
11 2 conferred by this chapter are for public uses and purposes for  
11 3 which public money may be expended and for which the power of  
11 4 eminent domain, to the extent authorized, and police power  
11 5 exercised; and that the necessity in the public interest for  
11 6 the provisions herein enacted is hereby declared as a matter  
11 7 of legislative determination.  
11 8 Sec. 23. Section 403.5, subsection 4, paragraph b,  
11 9 subparagraph (2), Code 2005, is amended to read as follows:  
11 10 (2) If it is to be developed for nonresidential uses, the  
11 11 local governing body shall determine that such nonresidential  
11 12 uses are necessary and appropriate to facilitate the proper  
11 13 growth and development of the community in accordance with  
11 14 sound planning standards and local community objectives.  
11 15 PARAGRAPH DIVIDED. The acquisition of open land authorized  
11 16 in subparagraphs (1) and (2) may require the exercise of  
11 17 governmental action, as provided in this chapter, because of  
11 18 defective or unusual conditions of title, diversity of  
11 19 ownership, tax delinquency, improper subdivisions, outmoded  
11 20 street patterns, deterioration of site, economic disuse,  
11 21 unsuitable topography or faulty lot layouts, or because of the  
11 22 need for the correlation of the area with other areas of a  
11 23 municipality by streets and modern traffic requirements, or  
11 24 any combination of such factors or other conditions which  
11 25 retard development of the area. If such governmental action

11 26 involves the exercise of eminent domain authority, the  
11 27 municipality is subject to the limitations of this chapter and  
11 28 chapters 6A and 6B.

11 29 Sec. 24. Section 403.5, subsection 4, unnumbered paragraph  
11 30 2, Code 2005, is amended by striking the unnumbered paragraph.  
11 31 Sec. 25. Section 403.6, subsection 3, Code 2005, is  
11 32 amended to read as follows:

11 33 3. Within its area of operation, to enter into any  
11 34 building or property in any urban renewal area in order to  
11 35 make inspections, surveys, appraisals, soundings or test  
12 1 borings, and to obtain an order for this purpose from a court  
12 2 of competent jurisdiction in the event entry is denied or  
12 3 resisted; to acquire by purchase, lease, option, gift, grant,  
12 4 bequest, devise, eminent domain or otherwise, any real  
12 5 property, or personal property for administrative purposes,  
12 6 together with any improvements thereon; to hold, improve,  
12 7 clear or prepare for redevelopment any such property; to  
12 8 mortgage, pledge, hypothecate or otherwise encumber or dispose  
12 9 of any real property; to insure or provide for the insurance  
12 10 of any real or personal property or operations of the  
12 11 municipality against any risks or hazards, including the power  
12 12 to pay premiums on any such insurance; and to enter into any  
12 13 contracts necessary to effectuate the purposes of this  
12 14 chapter: ~~Provided, however, that no statutory provision with~~  
~~12 15 respect to the acquisition, clearance or disposition of~~  
~~12 16 property by public bodies shall restrict a municipality or~~  
~~12 17 other public body exercising powers hereunder in the exercise~~  
~~12 18 of such functions with respect to an urban renewal project,~~  
~~12 19 unless the legislature shall specifically so state. A~~  
~~12 20 municipality or other public body exercising powers under this~~  
~~12 21 chapter with respect to the acquisition, clearance, or~~  
~~12 22 disposition of property shall not be restricted by any other~~  
~~12 23 statutory provision in the exercise of such powers unless such~~  
~~12 24 statutory provision specifically states its application to~~  
~~12 25 this chapter or unless this chapter specifically applies~~  
~~12 26 restrictions contained in another statutory provision to the~~  
~~12 27 powers that may be exercised under this chapter.~~

12 28 Sec. 26. Section 403.7, Code 2005, is amended to read as  
12 29 follows:

12 30 403.7 CONDEMNATION OF PROPERTY.

12 31 1. A municipality shall have the right to acquire by  
12 32 condemnation any interest in real property, including a fee  
12 33 simple title thereto, which it may deem necessary for or in  
12 34 connection with an urban renewal project under this chapter,  
12 35 subject to the limitations on eminent domain authority in  
13 1 chapter 6A. However, a municipality shall not condemn  
13 2 agricultural land included within an economic development area  
13 3 for any use unless the owner of the agricultural land consents  
13 4 to condemnation or unless ~~the agricultural land is to be~~  
~~13 5 acquired for industry as that term is defined in section~~  
~~13 6 260E.2 the municipality determines that the land is necessary~~  
13 7 or useful for any of the following:

13 8 a. The operation of a city utility as defined in section  
13 9 362.2.

13 10 b. The operation of a city franchise conferred the  
13 11 authority to condemn private property under section 364.2.

13 12 c. The operation of a combined utility system as defined  
13 13 in section 384.80.

13 14 2. A municipality ~~may shall~~ exercise the power of eminent  
13 15 domain in the manner provided in chapter 6B, ~~and Acts~~  
~~13 16 amendatory to that chapter or supplementary to that chapter,~~  
~~13 17 or it may exercise the power of eminent domain in the manner~~  
~~13 18 now or which may be hereafter provided by any other statutory~~  
~~13 19 provisions for the exercise of the power of eminent domain.~~  
13 20 Property already devoted to a public use may be acquired in  
13 21 like manner. However, real property belonging to the state,  
13 22 or any political subdivision of this state, shall not be  
13 23 acquired without its consent, and real property or any right  
13 24 or interest in the property owned by any public utility  
13 25 company, pipeline company, railway or transportation company  
13 26 vested with the right of eminent domain under the laws of this  
13 27 state, shall not be acquired without the consent of the  
13 28 company, or without first securing, after due notice to the  
13 29 company and after hearing, a certificate authorizing  
13 30 condemnation of the property from the board, commission, or  
13 31 body having the authority to grant a certificate authorizing  
13 32 condemnation.

13 33 3. In a condemnation proceeding, if a municipality  
13 34 proposes to take a part of a lot or parcel of real property,  
13 35 the municipality shall also take the remaining part of the lot  
14 1 or parcel if requested by the owner.

14 2 Sec. 27. Section 403A.3, subsection 4, Code 2005, is  
14 3 amended to read as follows:  
14 4 4. To lease or rent any dwellings, accommodations, lands,  
14 5 buildings, structures or facilities embraced in any project  
14 6 and (subject to the limitations contained in this chapter with  
14 7 respect to the rental of dwellings in housing projects) to  
14 8 establish and revise the rents or charges therefor; to own,  
14 9 hold and improve real or personal property; to purchase,  
14 10 lease, obtain options upon, acquire by gift, grant, bequest,  
14 11 devise or otherwise any real or personal property or any  
14 12 interest therein; to acquire by the exercise of the power of  
14 13 eminent domain any real property subject to section 403A.20;  
14 14 to sell, lease, exchange, transfer, assign, pledge or dispose  
14 15 of any real or personal property or any interest therein; to  
14 16 insure or provide for the insurance, in any stock or mutual  
14 17 company of any real or personal property or operations of the  
14 18 municipality against any risks or hazards; to procure or agree  
14 19 to the procurement of federal or state government insurance or  
14 20 guarantees of the payment of any bonds or parts thereof issued  
14 21 by a municipality, including the power to pay premiums on any  
14 22 such insurance.

14 23 Sec. 28. Section 403A.20, Code 2005, is amended to read as  
14 24 follows:

14 25 403A.20 CONDEMNATION OF PROPERTY.

14 26 A municipality shall have the right to acquire by  
14 27 condemnation any interest in real property, including a fee  
14 28 simple title thereto, which it may deem necessary for or in  
14 29 connection with a municipal housing project under this  
14 30 chapter, subject to the limitations on eminent domain  
14 31 authority in chapter 6A. A municipality ~~may~~ shall exercise  
14 32 the power of eminent domain in the manner provided in chapter  
14 33 6B, ~~and acts amendatory thereof or supplementary thereto, or~~  
14 34 ~~it may exercise the power of eminent domain in the manner now~~  
14 35 ~~or which may be hereafter provided by any other statutory~~  
15 1 ~~provisions for the exercise of the power of eminent domain.~~  
15 2 Property already devoted to a public use may be acquired in  
15 3 like manner: ~~Provided, that no.~~ However, real property  
15 4 belonging to the state, or any political subdivision thereof,  
15 5 ~~may shall not~~ be acquired without its consent, provided  
15 6 ~~further that no and~~ real property or any right or interest  
15 7 ~~therein in the property~~ owned by any public utility company,  
15 8 pipeline company, railway or transportation company vested  
15 9 with the right of eminent domain under the laws of this state,  
15 10 shall not be acquired without the consent of such the company,  
15 11 or without first securing, after due notice to such the  
15 12 company and after hearing, a certificate authorizing  
15 13 condemnation of such property from the board, commission, or  
15 14 body having the authority to grant a certificate authorizing  
15 15 condemnation.

15 16 In a condemnation proceeding, if a municipality proposes to  
15 17 take a part of a lot or parcel of real property, the  
15 18 municipality shall also take the remaining part of the lot or  
15 19 parcel if requested by the owner.

15 20 Sec. 29. Section 468.128, Code 2005, is amended to read as  
15 21 follows:

15 22 468.128 IMPOUNDING AREAS AND EROSION CONTROL DEVICES.

15 23 Levee and drainage districts are empowered to construct  
15 24 impounding areas and other flood and erosion control devices  
15 25 to protect lands of the district and drainage structures and  
15 26 may provide ways for access to improvements for the operation  
15 27 or protection thereof, where the cost is not excessive in  
15 28 consideration of the value to the district. Necessary lands  
15 29 or easements may be acquired within or without the district by  
15 30 purchase, lease or agreement, or by exercise of the right of  
15 31 eminent domain as provided for in chapter 6B and may be  
15 32 procured and construction undertaken either independently or  
15 33 in co-operation with other districts, individuals, or any  
15 34 federal or state agency or political subdivision.

15 35 Sec. 30. Section 468.146, subsection 1, Code 2005, is  
16 1 amended to read as follows:

16 2 1. When a drainage district is established and a  
16 3 satisfactory outlet cannot be obtained except through lands in  
16 4 an adjoining county, or when an improved outlet cannot be  
16 5 obtained except through lands downstream from the district  
16 6 boundary, the board shall have the power to purchase a right  
16 7 of way, to construct and maintain such outlets, and to pay all  
16 8 necessary costs and expenses out of the district funds. The  
16 9 board shall have similar authority relative to the  
16 10 construction and maintenance of silt basins upstream from the  
16 11 district boundary. In case the board and the owners of the  
16 12 land required for such outlet or silt basin cannot agree upon

16 13 the price to be paid as compensation for the land taken or  
16 14 used, the board is hereby empowered to exercise the right of  
16 15 eminent domain as provided for in chapter 6B in order to  
16 16 procure such necessary right of way.

16 17 Sec. 31. Section 468.366, Code 2005, is amended to read as  
16 18 follows:

16 19 468.366 SETTLING BASIN == CONDEMNATION.

16 20 If, before a district operating a pumping plant is  
16 21 completed and accepted, it appears that portions of the lands  
16 22 within said district are wet or nonproductive by reason of the  
16 23 floods or overflow waters from one or more streams running  
16 24 into, through, or along said district and that said district  
16 25 or some other district of which such district shall have  
16 26 formed a part, shall have provided a settling basin to care  
16 27 for the said floods and overflow waters of said stream or  
16 28 watercourse, but no channel to said settling basin has been  
16 29 provided, said board or boards are hereby empowered to lease,  
16 30 buy, or condemn the necessary lands within or without the  
16 31 district for such channel. Proceedings to condemn shall be as  
16 32 provided in chapter 6B for the exercise of the right of  
16 33 eminent domain.

16 34 Sec. 32. Sections 6B.4A and 6B.58, Code 2005, are  
16 35 repealed.

17 1 Sec. 33. EFFECTIVE AND APPLICABILITY DATES. This Act,  
17 2 being deemed of immediate importance, takes effect upon  
17 3 enactment and applies to condemnation actions initiated on or  
17 4 after the effective date of this Act.

17 5 EXPLANATION

17 6 This bill makes changes to the law relating to eminent  
17 7 domain authority and the procedure by which eminent domain  
17 8 authority is exercised (condemnation).

17 9 The bill provides limitations on the exercise of eminent  
17 10 domain authority for all private property by defining "public  
17 11 use", "public purpose", and "public improvement" to mean use  
17 12 of property by the general public, governmental entities,  
17 13 public or private utilities, or common carriers. "Public  
17 14 use", "public purpose", and "public improvement" are also  
17 15 defined in the bill to include the acquisition of property to  
17 16 remedy certain conditions in those portions of urban renewal  
17 17 areas designated as slum or blighted, acquisition of  
17 18 brownfield sites, and private use of property that is  
17 19 incidental to its public use.

17 20 The bill further provides that "public use", "public  
17 21 purpose", and "public improvement" do not mean economic  
17 22 development activities or privately funded activities unless  
17 23 such activities are specifically included in the definition of  
17 24 these terms.

17 25 The bill provides that, in an action contesting  
17 26 condemnation of property, the burden of proof is upon the  
17 27 acquiring agency to demonstrate by clear and convincing  
17 28 evidence that the proposed use of the property meets the  
17 29 definition of "public use", "public purpose", and "public  
17 30 improvement".

17 31 The bill extends the current notice requirements for  
17 32 condemnation of agricultural land to condemnation of all  
17 33 private property.

17 34 The bill strikes the exception for condemnation of  
17 35 agricultural land for industry and, correspondingly, repeals  
18 1 Code section 6B.4A that gave a compensation commission the  
18 2 authority to review an application by a city or county for  
18 3 condemnation of agricultural land for industry.

18 4 The bill provides that when engaging in negotiations with a  
18 5 landowner, the acquiring agency shall offer a price for the  
18 6 property that is not less than the acquiring agency's  
18 7 appraisal plus certain specified expenses that may be incurred  
18 8 by the property owner or less than the value determined under  
18 9 the acquiring agency's waiver procedure for property with a  
18 10 low fair market value plus such expenses. Code section 6B.54  
18 11 currently allows an acquiring agency to establish a waiver  
18 12 procedure for property with a low fair market value.

18 13 The bill provides that a challenge to the exercise of  
18 14 eminent domain authority or to the condemnation proceedings  
18 15 may be brought by the owner of the property at any time up  
18 16 until the deadline for filing the notice of appeal of  
18 17 appraisal of the damages determined by the compensation  
18 18 commission. The condemnation proceedings against such  
18 19 property shall be stayed while court action is pending.

18 20 The bill provides that if a compensation commission chooses  
18 21 to deliberate in closed session, the meeting is closed to all  
18 22 persons except commissioners.

18 23 The bill specifies that payments for relocating persons



18 24 displaced by condemnation, including expenses incurred in  
18 25 moving the person's family, business, or farm operation, shall  
18 26 be paid for any condemnation that displaces a person, not just  
18 27 those that are for projects or programs receiving federal  
18 28 financial assistance.

18 29 The bill specifies that Code sections 6B.54 and 6B.55,  
18 30 relating to requirements imposed on acquiring agencies, apply  
18 31 to condemnation for a public use, public purpose, or public  
18 32 improvement.

18 33 The bill makes changes to various provisions of the Code  
18 34 where eminent domain authority is extended to an entity other  
18 35 than those listed in Code chapter 6A to specify that those  
19 1 entities, when condemning property, are subject to the  
19 2 provisions of Code chapters 6A and 6B.

19 3 The bill provides that the authority to exercise the right  
19 4 of eminent domain under the urban renewal Code chapter and the  
19 5 Code chapter authorizing municipal housing projects is subject  
19 6 to the limitations on eminent domain authority in Code chapter  
19 7 6A, "Eminent Domain Law (Condemnation)", and the general  
19 8 procedure for condemnation of property set out in Code chapter  
19 9 6B, "Procedure Under Eminent Domain". Also, relating to  
19 10 municipal housing projects, the bill provides that if a  
19 11 municipality proposes to take a part of a lot or parcel of  
19 12 real property, the municipality shall also take the remaining  
19 13 part of the lot or parcel if requested by the owner. The same  
19 14 requirement currently applies to condemnation of property for  
19 15 urban renewal purposes.

19 16 The bill takes effect upon enactment and applies to  
19 17 condemnation actions initiated on or after the effective date  
19 18 of the bill.

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